IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3589 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJULA TALUKA PANCHAYAT

Versus

BIPINBHAI R SARVAIYA

Appearance:

1. Special Civil Application No. 3589 of 2001

MR HS MUNSHAW for Petitioner No. 1

MR SUNIL C PATEL for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 30/01/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Munshaw for the petitioner and Mr. Sunil C. Patel, learned advocate for the respondent workman. By way of this petition, the

petitioner has challenged the award made by the labour court, Amreli in Reference (LCB) No. 422/98 (Old No. 33/95) dated 19th October, 2000 wherein the labour court has set aside the termination order and has granted reinstatement in favour of the respondent workman with continuity of service and full back wages for the intervening period. Initially, this court has issued rule and notice as to interim relief returnable on 16th October, 2001 and ad.interim relief in terms of para 8(C) of the petition has been granted by order dated 1st August, 2001.

Learned advocate Mr. Munshaw appearing for the petitioner has submitted that the award in question has been made by the labour court concerned in absence of the petitioner and that no opportunity was given to the petitioner before passing the award in question and, therefore, the award is against the principles of natural justice. However, according to my view, under rule 26A of the Industrial Disputes Act (Gujarat) Rules, 1966, the petitioner is having remedy to approach the labour court concerned for setting aside such an ex parte award and the labour court is also empowered to grant the interim relief and to condone the delay in moving such an application as per rule 26B of the said Rules. Therefore, on that ground alone, this petition is not required to be entertained by this court.

Learned advocate Mr. Patel appearing for the respondent workman has submitted that the award in question has been passed by the labour court concerned on 19th October, 2000 and the interim stay against the reinstatement as well as back wages has been granted by this court and, therefore, the respondent workman is entitled to have the benefits under section 17B of the Industrial Disputes Act, 1947. As against that submission, learned advocate Mr. Munshaw has submitted that so far the respondent workman has not filed any affidavit as required under section 17B of the Industrial Disputes Act, 1947. Learned advocate Mr. Patel for the respondent workman has submitted that the necessary affidavit under section 17B of the Act will be filed by the respondent within fifteen days from the date of receipt of copy of this order and copy of such affidavit will be served upon the petitioner.

Considering these facts, during the pendency of the present petition, stay has operated against the award passed by the labour court in favour of the respondent workman and, therefore, as per the provisions of section 17B of the Industrial Disputes Act, 1947, the respondent

workman is entitled to the benefits of his last drawn wages with maintenance allowances during the pendency of the petition. In view of these facts, it is directed to the petitioner to pay the wages under section 17B of the Industrial Disputes Act, 1947 to the respondent workman from 1st August, 2001 till 30th January, 2002 within two months from the date of receipt of copy of this order provided that an affidavit under section 17-B is filed by the respondent workman within fifteen days from the date of receipt of copy of this order. With these observations and directions, this petition is disposed of at this stage without observing anything on merits. There shall be no order as to costs.

30.1.2002. (H.K. Rathod,J.)

Vyas